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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 4, 1999

APPLICATION OF

VIRGINIA HIGHER EDUCATION TUITION
TRUST FUND

CASE NO. SEC990027

For an official interpretation

OFFICIAL INTERPRETATION

THIS MATTER came before the Commission for consideration upon the letter-application, with exhibits, of the Virginia Higher Education Tuition Trust Fund ("Applicant" or "Fund") dated April 16, 1999, filed under § 13.1-525 of the Code of Virginia by its counsel, the Attorney General of Virginia. Payment of the statutory fee has been waived. Applicant has requested determinations that certain savings trust account agreements are exempt from the securities registration requirements of the Securities Act ("Act") § 13.1-501 et seq. of the Code of Virginia, pursuant to § 13.1-514 A 1 of the Act, and that its employees, officers and members of its Board are not investment advisors or investment advisor representatives in respect of their efforts on behalf of Applicant. The pertinent information contained in the application is summarized as follows:

Applicant was established by the Virginia General Assembly in 1994 as a special nonreverting fund, effective July 1, 1996, in the treasury of the Commonwealth. The statutes governing Applicant's creation and operation are codified at § 23-38.75 et seq. of the Code of Virginia. In the April 16, 1999, letter application, the Office of the Attorney General of Virginia opined that Applicant is an agency of the Commonwealth. The purpose of the Fund is to enhance the accessibility and affordability of higher education for the citizens of Virginia, initially through the sale of contracts for the prepayment of college tuition. See our official interpretation in Application of Virginia Higher Education Trust Fund, Case No. SEC960089 for a further description of these contracts. By legislation enacted in the 1999 Session of the General Assembly and signed by the Governor, effective July 1, 1999, the Fund may enter into savings trust account agreements with eligible persons ultimately resulting in distributions from the accounts to defray certain education-related expenses incurred by designated beneficiaries. The Applicant now seeks our interpretation of the securities registration, investment advisor registration and investment advisor representative registration provisions of the Act and our Rules as applicable to activities relating to creation and administration of these trust accounts.

The Commission, relying on the information provided by the Applicant and upon consideration of this matter, is of the opinion and finds that the Applicant is an agency or instrumentality of the Commonwealth of Virginia for purposes of § 13.1-514 A 1 of the Act and Rule 21 VAC 5-80-210 A 6 of the Commission's Securities Act Rules. No opinion is expressed on the question of whether any person or company must be registered as a broker-dealer or agent in order to solicit the sale of the trust accounts in Virginia. Accordingly,

IT IS ORDERED THAT:

(1) The trust accounts described above are exempt from the securities registration requirement of the Act pursuant to § 13.1-514 A 1 of the Act.

(2) The members of the Board, officers and employees of the Applicant are not investment advisors or investment advisor representatives as a result of their activities on behalf of the Applicant, provided their activities are restricted in accordance with Securities Act Rule 21 VAC 5-80-210 A 6.